IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8303 OF 2003

M/s. Systech Ltd..... Petitioner.

Versus

Maj.Gen.Vijaykumar Vinayak Bhide
and another. ... ... Respondents.

Mr. P. S. Dani for the Petitioner.

None for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : JANUARY 18, 2005.

P.C.:

The respondents sued the petitioner under Order 37 of the Code of Civil Procedure for a sum of Rs.1,08,983/-. The claim in the suit is as follows:

Rs.1,00,000/-	Towards refund of the fix deposit.
Rs. 08,983/-	Interest at the rate of 14% as per the contract from 1/10/99 till filing of the suit.
Rs.1,08,983/-	Total amount due.

2. The petitioner sought leave to defend. The trial

court came to the conclusion that the petitioner is not entitled to retain a sum of Rs.1,00,000/- which it has accepted as fixed deposit and there is no merit in the contention that the petitioner company retained the amount because it is running in loss and facing financial crises. Therefore, the court has, while granting leave to defend, directed the petitioner to deposit a sum of Rs.1,00,000/-.

3. As regards the rest of the claim, which is for interest, the trial court seems to have, prima facie, accepted that the claim is disputable and has therefore not directed the petitioner to deposit the said amount.

4. Mr. Dani, learned Counsel for the petitioner, relied on a judgment of the Supreme Court in **Sunil Enterprises and another -vs- SBI Commercial & International Bank Ltd.,** reported in (1998) 5 SCC 354 and submitted that the trial court was not justified in directing the petitioner to deposit the amount of Rs.1,00,000/- since it has not come to the conclusion that the petitioner's defence is illusory or sham or practically moonshine. It is not possible to accept this contention. The trial court has, vide para 4 of the order, recorded a finding to the above effect in

observing that the petitioner is not entitled to retain the amount of Rs.1,00,000/- accepted as a fixed deposit. This does amount to finding that the petitioner has no defence. In fact, the trial court appears to have been reasonable enough in not directing the petitioner to deposit the amount claimed on account of interest since the claim for interest is seriously disputed by the petitioner.

5. In this view of the matter, there is no merit in the writ petition, which is hereby dismissed.

Sd/-

S. A. BOBDE, J.